

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID SCOTT,

Plaintiff,

Hon. Paul L. Maloney

v.

Case No. 1:06 CV 540

TERRY PITCHER,

Defendant.

REPORT AND RECOMMENDATION

Plaintiff initiated this action on July 31, 2006, against Terry Pitcher, an employee of the Michigan Department of Corrections. Plaintiff has failed to effect service on Defendant or request the Court's assistance in effecting service. Therefore, pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Plaintiff's complaint be **dismissed without prejudice**.

Plaintiff initiated the present action on July 31, 2006. (Dkt. #1). On August 23, 2006, the Court directed that Plaintiff's complaint be served on Defendant. (Dkt. #5). The attempt to serve Defendant Pitcher was rejected on September 1, 2006. (Dkt. #6). While more than two and one-half years has passed since the unsuccessful attempt to serve Defendant Pitcher, Plaintiff has failed to request an extension of time to effect service on Defendant or otherwise request the Court's assistance in effective service. In fact, Plaintiff has failed to take any action in this case since filing his complaint.

Federal Rule of Civil Procedure 4(c) indicates that "[a] summons must be served together with a copy of the complaint." The time frame within which service must be effected is articulated in Rule 4(m), which provides that if service of the summons and complaint is not made upon a defendant

within 120 days after the filing of the complaint, “the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant.” If the plaintiff demonstrates good cause for such failure, however, “the court shall extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m); *see also, Bush v. City of Zeeland*, 2003 WL 22097837 at *2 (6th Cir., Sep. 5, 2003) (citation omitted). Considering Plaintiff’s lack of diligence in this matter, the Court recommends that Plaintiff’s claims against Defendant Pitcher be dismissed without prejudice for failure to timely effect service.

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within ten (10) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court’s order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Date: May 22, 2009

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge